

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
Rural Call Completion) WC Docket No. 13-39

**REPLY COMMENTS OF THE AMERICAN CABLE ASSOCIATION
ON THE NOTICE OF PROPOSED RULEMAKING**

The American Cable Association (“ACA”) submits reply comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) to address problems in the completion of long-distance telephone calls to customers in rural areas.¹ In its initial comments,² ACA argued: (1) rural call completion issues are a serious and continuing problem the Commission needs to address with effective solutions; (2) the Commission should fix the problem by holding responsible and applying regulations to initial facilities-based long-distance (“LD”) providers,³ which are the primary economic beneficiary of the service, control long-distance call routing, and have direct access to data on call completion; and (3) the Commission

¹ See *Rural Call Completion*, WC Docket No. 13-39, Notice of Proposed Rulemaking, FCC 13-18 (rel. Feb. 7, 2013).

² Comments of the American Cable Association on the Notice of Proposed Rulemaking, WC Docket No. 11-39 (May 13, 2013) (“ACA Comments”).

³ For purposes of these comments, ACA defines LD provider (which includes an interexchange carrier) as the provider that transports (or for an intermediate provider, participates in transporting) a long-distance call from the calling party’s local service provider’s service area to the called party’s local service provider’s service area. The local service provider’s network would include its end office and/or tandem switching. The transmission technology used by an LD or local service provider can be TDM or IP. (Thus, a LD provider would include a provider using IP technology to enable long distance calls to be taken beyond the calling party’s local service provider’s service area.) A local service provider can be a local exchange carrier, a VoIP provider, or commercial mobile radio service provider.

should not apply new regulations to local service providers, which on one end provide a connection for LD providers to reach their long-distance customers and, on the terminating end, for LD providers to reach the called parties.⁴ In these reply comments, ACA responds to those commenters that seek to minimize the extent of the completion problem and delay immediate action. In addition, ACA discusses the rationale for directing its regulatory solutions to initial facilities-based LD providers and not local service providers that are not facilities-based LD providers.

⁴ ACA also stated in its comments that: (1) if the Commission decides to impose requirements on local service providers, at least it should adopt its proposal to exempt providers with 100,000 or fewer retail long-distance subscribers, and (2) if the Commission does not limit its solution to only the initial facilities-based LD provider, for local voice providers with more than 100,000 long-distance subscribers, the Commission should create a safe harbor if they require in their access tariff or via contracts with LDs that the LD provider shall complete calls they originate in compliance with any regulatory requirements.

ACA notes that some commenters favor the small provider exemption. (*See e.g.*, Comments of the United States Telecom Association, WC Docket No. 13-39, at 8 (May 13, 2013); Comments of Cbeyond, Earthlink, Integra, and TW Telecom, WC Docket No. 13-39, at 3 (May 13, 2013) (“Comments of Cbeyond”).) Other commenters do not favor an exemption for small entities. (*See e.g.*, Comments of Level 3 Communications, LLC on the Rural Call Completion Notice of Proposed Rulemaking, WC Docket No. 13-39 at 4-6.) Level 3 bases its argument on the contention that “large and small intermediate providers can create rural call completion problems in the fluid and highly competitive wholesale market.” ACA does not contest Level 3’s argument regarding intermediate carriers. Level 3’s rationale, however, does not apply to local service providers that are not LD providers. Finally, state regulators oppose the small entity exemption. (*See* Comments of the National Association of Regulatory Utility Commissioners, WC Docket No. 13-39, at 10 (May 8, 2013) (“If the purpose of the rules is to ensure long distance providers adequately monitor their call completion performance, or to incentivize them to do so, the size of their customer base is irrelevant.”).) NARUC does not support its argument that small long-distance providers (which, using the NPRM’s definition, may arguably include local service providers) should be covered by new regulations by providing any data about the effects of the exclusion of these entities on the efficacy of the proposed regulations. In addition, NARUC does not discuss the significant burden on small providers. ACA presented data in its comments that excluding small providers will not significantly undermine new regulations and including small providers would be very costly for them. (*See* ACA Comments at 8-10).

I. ACA SUPPORTS THE IMPOSITION OF REGULATIONS TO ADDRESS SERIOUS AND CONTINUING RURAL CALL COMPLETION PROBLEMS

Many ACA members operate in rural areas and are members of rural telecommunications trade associations that submitted comments calling for the Commission to adopt “meaningful rules requiring providers to capture and report data necessary for the Commission to monitor carrier call completion performance and aid in enforcement action.”⁵ ACA shares this view. Over the past several years, the Commission has collected more than sufficient documentation upon which to base imposition of new requirements. More importantly, members of rural telecommunications trade associations have informed the Commission that even after the recent Level 3 Order and Consent Decree,⁶ call completion problems persist and are harming their customers.⁷ In other words, LD providers are continuing to take their chances that their failure to complete calls will go undetected and unenforced.

The need for Commission action is further supported by state regulatory commissions that have recently and closely examined call completion problems. For instance, in a memo released after the Level 3 Order and Consent Decree, the staff of the Missouri Public Service Commission concluded, “Call completion problems continue to exist. Call completion problems appear to occur only in rural out-state areas served by small incumbent local telephone

⁵ See Comments of the National Exchange Carrier Association, Inc., NTCA – The Rural Broadband Association, the Western Telecommunications Alliance, and the Eastern Rural Telecom Association (“Rural Associations”), WC Docket No. 13-39, at i (May 13, 2013) (“Rural Associations Comments”).

⁶ See *Level 3 Communications, LLC*, Order, File No. EB-12-IH-0087 (rel. Mar. 12, 2103) and *Level 3 Communications, LLC*, Consent Decree, File No. EB-12-IH-0087 (rel. Mar. 12, 2013).

⁷ See e.g., Joint Comments of Bay Springs Telephone Company, Inc. et al., WC Docket No. 13-39, at 4 (“These Commission warnings are being blatantly ignored. The number of uncompleted calls continues to escalate while the major carriers in this country look the other way.”).

companies. The primary cause of call completion problems appears to be intentional traffic manipulation by certain intermediate providers (a.k.a. least cost routers) used by some originating interexchange carriers.”⁸ In addition, a Nebraska Public Service Commissioner reacting to the Commission’s Level 3 action stated, “The use of call routers has long been a part of the telecommunications industry. The problems arise when cost savings is prioritized over service. It is unfortunate companies must be reminded to put customers first...The action by the [FCC’s] Enforcement Bureau represents a big first step in dealing with call failures experienced by Nebraskans. More work is left to do.”⁹

The Commission has been diligent in seeking to address call completion problems, including by adopting last year a declaratory ruling clarifying that failure to deliver calls to rural areas or degrade the quality of such calls may violate sections 201 and 202 of the Communications Act¹⁰ and by issuing the enforcement order against Level 3. Yet, apparently, there continues to be strong incentives for a significant number of LD providers to avoid their legal obligations. The Commission should not tolerate this behavior and should adopt clear,

⁸ See “Memorandum on Staff’s Status Report and Recommendation for Comment Period” to Missouri Public Service Commission Official Case File, Case No. TW-2012-0112, from William Voight, Supervisor, Telecommunications Rates and Tariffs, at 10 (Mar. 29, 2013). See also, *id.* at 9 (“Based on Staff’s analysis, call termination trouble reports involved terminating calls only to customers of small rural telephone companies located in the out-state areas of Missouri. Staff has no reason to believe the instances of call termination problems to rural out-state areas of Missouri have subsided.”); *id.* at 10 (“In the Staff’s view, the entities that are causing the call termination problems in Missouri are purposely and deliberately creating the problem.”).

⁹ See “NPSC Applauds FCC Action Combatting Rural Telephone Problems,” Nebraska Public Service Commission Press Release (Mar. 18, 2013).

ACA notes that the Oregon Public Utility Commission also recently addressed call completion problems. See *In the Matter of Amendments to Address Call Termination Issues*, Order, OAR 860-032-0007, at 1 (Dec. 17, 2012) (“Rural local exchange carriers (RLECs) have conducted exhaustive testing and found that many long distance calls do not reach their networks...One identified cause...is the use of least cost routing.”).

¹⁰ See 2012 Declaratory Ruling, 27 FCC Rcd 1351.

stringent monitoring and reporting regulations for initial facilities-based LD providers.

II. THE COMMISSION SHOULD DIRECT ANY REGULATORY SOLUTION TOWARDS LD PROVIDERS THAT CONTROL LONG-DISTANCE CALL FLOW TO RURAL AREAS AND NOT ORIGINATING LOCAL EXCHANGE (VOICE) PROVIDERS

In adopting a solution to call completion problems, the Commission should focus its regulations on the root of the problem – initial facilities-based LD providers – because they are the primary beneficiaries of the long-distance calls, control long-distance call routing, including by entering into relationships with intermediate carriers that use least-cost routing techniques to complete the call, and can detect call completion problems on their own without needing to gather any additional information about long-distance transmissions from the local service provider. This view is shared by numerous commenting parties,¹¹ including the main proponents of the NPRM, the Rural Associations, which state in their comments:

¹¹ See e.g., Comments of Time Warner Cable Inc., WC Docket No. 13-39, at 2 (May 13, 2013) (“Most importantly, there is no evidence that interconnected VoIP providers or other originating providers are responsible for any problems with delivery of calls to rural customers. Rather, intermediate providers and long-distance carriers are the widely acknowledged cause of those issues. Although TWC’s interconnected VoIP originates long-distance calls on its ‘last mile’ local network, TWC itself does not carry those calls. Rather, TWC contracts with long-distance carriers, who carry and deliver TWC’s customers’ traffic on TWC’s behalf. Accordingly, requiring originating local providers such as TWC to report and retain call completion data is unlikely to advance the Commission’s goals in this area effectively.”); See also Comments of Cbeyond at 2 (The Commission should treat “the wholesale long-distance provider as the first facilities-based provider. This is because competitive LECs that resell long-distance telephone service usually do not have access to the information regarding long-distance call attempts...Nor is it even clear that competitive LECs would be able to obtain this information from their wholesale long-distance service vendors on a consistent basis...It would therefore be significantly more efficient and practical to classify wholesale long-distance service providers as the first facilities-based provider involved in handling long-distance calls.”).

CenturyLink argues that the scope of the call completion problem may be broader and not simply one involving call routing and use of intermediate providers. It therefore proposes that “all service providers that offer long distance voice services should be held accountable...[including] long distance voice providers using other platforms or

Facilities-based long distance providers (whether using traditional long-distance services or IP routing services) are the entities that choose from among a variety of “least cost routers” for the initial call path. These are also the entities that have financial incentives to choose less expensive, potentially lower quality routes. Thus, these facilities-based providers who hold themselves out as handling ‘long distance’ traffic for local service carriers and VoIP providers that maintain only local facilities should bear the responsibility of tracking and reporting on their call completion results.¹²

In contrast to the key role played by facilities-based LD providers in long distance call completion, local service providers play no direct role in routing long distance calls nor do they have direct access to complete call tracking data. As such, the local provider has no role in causing call completion problems and should not have to comply with new monitoring and reporting rules. As noted in its initial comments,¹³ ACA’s approach is consistent with the rationale underlying the Commission’s payphone service compensation decision, which determined that facilities-based LD providers were the primary economic beneficiary and were in the best position to track calls.¹⁴ Finally, ACA notes there was a dearth of comments specifically favoring applying new regulations to local service providers that are not facilities-based LD providers.

nontraditional technologies.” *See* Comments of CenturyLink WC Docket No. 13-39, at 13 (May 13, 2013). ACA concurs with CenturyLink’s comments insofar as it seeks to include a provider using IP technology to enable long distance calls to be taken beyond the calling party’s local service provider’s service area. However, the rules should not extend to local service providers that are not LD providers.

¹² *See* Rural Associations Comments at 9.

¹³ *See* ACA Comments at 7.

¹⁴ *See e.g., The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, FCC 03-235, ¶ 27 (Oct. 3, 2003).

Respectfully submitted,

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